



STATE OF INDIANA

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March 16, 2015

Mr. Terry Karre
29741 Old US 20
Elkhart, IN 46516

Re: Formal Complaint 15-FC-48; Alleged Violation of the Access to Public Records Act by the City of Elkhart

Dear Mr. Karre,

This advisory opinion is in response to your formal complaint alleging the City of Elkhart ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Elkhart has responded to your complaint via counsel, Margaret M. Marnocha, Esq. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on February 9, 2015.

BACKGROUND

Your complaint dated February 8, 2015 alleges the City of Elkhart violated the Access to Public Records Act by failing to acknowledge your public records request.

On January 26, 2015, you submitted a public records request to the City of Elkhart. You requested "any and all documentation" in regards to annexation or reversing Ordinances 5389, 5390 and 5391. You reaffirmed your request on January 28, 2015. As of the date of the filing of your complaint, you had not received a response.

On February 12, 2015, counsel for the City of Elkhart responded to your complaint. Counsel contends that on January 28, 2015 you delivered your Public Access request to an office manager, who orally acknowledged the receipt of request, date stamped it, and provided you with a copy of said request. The request was then sent to counsel for review as to whether the records were subject to disclosure.

The City contends that under APRA, an initial response to an in-person request must occur within 24 hours. Further, counsel contends APRA "does not dictate that the initial

response must be made in writing when the requester presents the request in person.” The City argues the office manager’s acknowledgement did convey to you your request had been received. Finally, counsel contends the final determination denying disclosure was sent to you on February 10, 2015 and therefore Elkhart has not violated APRA. You have not stated an objection to the City’s ultimate determination as to the production of the records.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The City of Elkhart is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

You made the request in person, as evidenced by the City file stamping a copy of your request. This alone is indicative of an acknowledgement. A public agency does not have to produce the requested documents within 24 hours, nor does an acknowledgement have to be in writing. The face-to-face interaction between yourself and the office manager satisfies the acknowledgement obligation of the City.

Furthermore, the City of Elkhart has a conspicuous and accessible form for public records request. I was able to find the form with a simple Google search. In the future, it is my recommendation you avail yourself of this process to ensure efficiency and mitigate inconvenience for you and the City.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the City of Elkhart has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Margaret M. Marnocha, Esq.